FILE COPY.

FILED
FEB 28 1906
JAMES H. KENNEDY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1905.

No. [redacted]59

CHARLES K. OFFIELD,
PLAINTIFF IN ERROR,

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
DEFENDANT IN ERROR.

MOTION TO DISMISS OR AFFIRM.

EDWARD G. BUCKLAND,
GEORGE D. WATROUS,
Counsel for Defendant in Error.

The Tuttle, Morehouse & Taylor Co., Law Printers

Supreme Court of the United States

OCTOBER TERM, 1905.

No. 314.

CHARLES K. OFFIELD,

PLAINTIFF IN ERROR,

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

DEFENDANT IN ERROR.

MOTION TO DISMISS OR AFFIRM.

Comes now the defendant in error, and moves the Court to dismiss the writ of error herein for want of jurisdiction in the Supreme Court of the United States to review the same, because no Federal question sufficient to give jurisdiction to this Court to review the decision of the State Court is involved in the cause, or was decided by the Supreme Court
2 of Errors of the State of Connecticut.

And the said defendant in error further moves this Court to affirm the judgment of the Supreme Court of

Errors of the State of Connecticut, on the ground that although the record may show that this Court has jurisdiction, it is manifest that the writ was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument, inasmuch as the said Court held that the property of the plaintiff in error, to wit: two shares of the stock of the New Haven and Derby Railroad Company of the par value of one hundred dollars each, is to be taken by the defendant in error, a railroad corporation, for the purpose of improving its railroad for public service, and therefore for a public use, and that this proceeding is to determine the compensation due therefor, and that such taking and proceeding together constitute due process of law, which ruling was obviously correct.

EDWARD G. BUCKLAND,
GEORGE D. WATROUS,
Counsel for Defendant in Error.

FILE COPY.

FILED
MAR 1 1906
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1905.

No. 59

CHARLES K. OFFIELD,
Plaintiff in Error,

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Defendant in Error.

BRIEF IN BEHALF OF DEFENDANT IN ERROR UPON MOTION TO DISMISS OR AFFIRM.

EDWARD G. BUCKLAND,
GEORGE D. WATROUS,
Counsel for Defendant in Error.

The Tuttle, Morehouse & Taylor Co., Law Printers

Supreme Court of the United States,

OCTOBER TERM, 1905.

No. 314

CHARLES K. OFFIELD,

Plaintiff in Error,

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Defendant in Error.

BRIEF IN BEHALF OF DEFENDANT IN ERROR UPON MOTION TO DISMISS OR AFFIRM.

STATEMENT.

The plaintiff in error is the owner of two shares of the capital stock of The New Haven and Derby Railroad Company, a Connecticut corporation. These are the only two outstanding shares of a total number of 4470; the remaining shares having been lawfully acquired by the defendant in error. The railroad is under lease to the defendant in error for the period of ninety-nine years from July 1st, 1892, at a rental to yield shareholders four per cent per annum upon

the capital stock during the remainder of the term (Record, folios 19 and 20, pages 10 and 11).

This proceeding was instituted under Sections 3694 and 3695 of the General Statutes of the State of Connecticut, 1902, (quoted in full in the record, folios 74 and 75, page 40 and on page 2 hereof), for the purpose of condemning the two shares of stock owned by the plaintiff in error. It was brought in the first instance before a Judge of the Superior Court, and reserved upon a demurrer to the substituted application for the advice of the Supreme Court of Errors. Advice was given that the demurrer be overruled (Record, folio 28, page 16). An answer was then filed to the substituted application (Record, folio 38, page 21). The demurrer to the second defense was sustained by the Judge of the Superior Court (Record, folio 44, page 24). A hearing was then had upon the merits of the substituted application, and a judgment rendered (Record, folio 45, page 25), finding all of the allegations of the substituted application to be true (folio 47) and that the purchase of the stock of the plaintiff in error would be for the public interest. Appraisers were appointed to estimate the damage that might arise to the plaintiff in error from the taking of his stock. Upon appeal to the Supreme Court of Errors of the State of Connecticut this judgment was affirmed; the opinion appearing on page 30 of the record.

These proceedings were taken under Sections 3694 and 3695 of the General Statutes of Connecticut, 1902, which are as follows:

"§ 3694. **Condemnation of corporate stock.** In case any railroad company acting under the authority of the laws of this state shall have acquired more than three-fourths of the capital stock of any steamboat, ferry, bridge, wharf, or rail-

road corporation, and cannot agree with the holders of outstanding stock for the purchase of the same, such railroad company may, upon a finding by a judge of the superior court that such purchase will be for the public interest cause such outstanding stock to be appraised in accordance with the provisions of § 3687. When the amount of such appraisal shall have been paid or deposited as provided in said section, the stockholder or stockholders whose stock shall have been so appraised shall cease to have any interest therein, and on demand shall surrender all certificates for such stock, with duly executed powers of attorney for transfer hereon, to the corporation applying for such appraisal.

§ 3695. **Stockholders may begin proceedings.** If any person holding a minority of the shares of stock of any corporation referred to in § 3694 cannot agree with the railroad company owning three-fourths of such stock for the purchase of his shares, he may cause the same to be appraised in accordance with the provisions of § 3687. When such appraisal shall have been made and recorded in the office of the clerk of the superior court of any county where such railroad company operates a railroad, and the certificates for such stock, with duly executed powers of attorney for transfer thereon, have been deposited with such clerk for such railroad company, such appraisal shall have the effect of a judgment against such company and in favor of the holder of such stock, and at the end of sixty days, unless such judgment is paid, execution may be issued."

Section 3687, referred to in each of the above sections, is as follows:

"§ 3687. **Land how taken; damages.** When any company shall have the right to take real estate for railroad purposes, and cannot obtain it by agreement with the parties interested therein, it may apply to any judge of the superior court for the appointment of appraisers to estimate all damages that may arise to any person from the taking and occupation of such real estate for railroad purposes, and after reasonable notice of said application shall have been given to all parties in interest, such judge shall appoint three appraisers, who shall be sworn, and give reasonable notice

to said parties in regard to the time and place of making such estimate, and shall view the premises and estimate such damages, but shall not include in such estimate the expense of erecting and maintaining fences along the line of such railroad. Such appraisers shall return an appraisal of such damages in writing, under their hands, to the clerk of the superior court in the county where the estate lies, who shall record it; and when so returned and recorded, such appraisal shall have the effect of a judgment, and execution may issue at the end of sixty days from the time of such return, in favor of the persons respectively to whom damages may be appraised; and such appraisers shall be paid by such company for the time actually spent in making such appraisal and return. No railroad shall be worked upon, or opened across, any real estate, until the damages appraised to any person interested therein shall have been paid or secured to his satisfaction, or deposited for his use with the treasurer of the county."

ERRORS ASSIGNED.

The plaintiff in error challenges the validity of the judgment appointing appraisers to estimate the damage to become due to him by reason of the condemnation of his stock. The points contained in his six assignments of error may be re-arranged as follows:

1. The statutes of the State of Connecticut and the action taken thereunder deny to the plaintiff due process of law, because his property is to be taken for a private, not a public, use. (Record, pages 39-41; Assignments 1, 4 and 5.)

2. The statutes and the action taken thereunder constitute an impairment by the State of the obligation of contract. (Record, page 40; Assignment 2.)

3. The statutes and the action taken thereunder are in violation of the Fifth Amendment of the Constitution of the United States.

ARGUMENT.

I.

Property taken by a railroad company for the improvement of its facilities for public service, and declared by the highest State Court to be for a public use, under a statute with an appropriate provision for compensation, is not taken without due process of law.

There is, and can be, no contention that the method prescribed by the statute for the assessment of damages does not constitute due process of law, if the property in question (shares of stock) may be lawfully taken for the purpose set forth in the substituted application (Record, pages 10-12).

The applicant, the defendant in error, desires to replace the present single track on the railroad of the New Haven and Derby Railroad Company with a double track; to improve the alignment and grades; and to open up a through all-rail line from New Haven to the West by the Poughkeepsie bridge, giving a cheaper, more reliable and more expeditious service for freight and passengers than heretofore.

The State Court has construed the phrase "for the public interest" in this statute as equivalent to the phrase "for public use." This construction will undoubtedly be accepted by this Court.

The Supreme Court of the State held that the condemnation of the stock of the plaintiff in error was justifiable and for a public use.

If the Court will permit argument and citation on so simple a proposition, we would call its attention to the

language of Mr. Justice Harlan in the case of Cherokee Nation v. Kansas Southern Railway Co., 135 U. S., at page 657, as follows:

"The question is no longer an open one, as to whether a railroad is a public highway, established primarily for the convenience of the people, and to subserve public ends, and, therefore, subject to governmental control and regulation. It is because it is a public highway and subject to such control, that the corporation by which it is constructed, and by which it is to be maintained, may be permitted, under legislative sanction, to appropriate private property for the purposes of a right of way, upon making just compensation to the owner, in the mode prescribed by law."

If land taken for the *construction* of a commercial railroad is, as we believe, invariably deemed to be taken for a public use, why does not the *improvement* of such a highway so as to make it *more useful* for the public, subserve the public use as well as the original construction?

The improvement here is to be made by the indirect method of removing the wreckage which, as found by the Court, obstructs progress. In effect it is a condemnation of 2/4470 of the franchise of the New Haven and Derby Railroad Company. That a franchise, in whole or in part, may be taken by condemnation, needs no citation or argument.

When a State Court, familiar with local needs and conditions, declares a use to be public, it would, in view of this Court's recent ruling in the case of Clark v. Nash, 198 U.S., 361, be only in extreme cases that this Court would declare the action of State Legislature and Court invalid in contravention of the rule requiring due process of law.

II.

The statutes in question and the action taken thereunder do not impair the obligation of any contract within the meaning of Article First, Section 10 of the Constitution of the United States.

Sec. 10 of Article First does not prevent the condemnation of contract rights.

Long Island Water Supply Co. v. Brooklyn,
166 U. S., 685.

Indeed, if the defendant in error is correct in its contention that the taking will be for public, not for private, use, the controversy is ended.

III.

The statutes of the State of Connecticut and the action taken under them, are not in violation of the Fifth Amendment of the Constitution of the United States.

This proposition needs no argument. The mistake of plaintiff in error is obvious.

Even though it be so that a Federal question is presented so that this Court might entertain jurisdiction, the defendant in error contends that the questions so presented are entirely devoid of merit, and that an intention to cause delay is manifest upon the face of the record. It is also manifest that these questions are so frivolous as not to need further

argument, in view of well settled conclusions long ago reached by this Court.

Respectfully submitted,

EDWARD G. BUCKLAND,
GEORGE D. WATROUS,
Counsel for Defendant in Error.

FILE COPY.

Office Supreme Court, U. S.
FILED.
OCT 22 1906
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1906.

Number 59.

CHARLES K. OFFIELD,
Plaintiff in Error

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

EDWARD G. BUCKLAND,
GEORGE D. WATROUS,
Counsel for Defendant in Error.

The Tuttle, Morehouse & Taylor Co., Law Printers

Supreme Court of the United States,

OCTOBER TERM, 1906.

Number 59.

CHARLES K. OFFIELD,
Plaintiff in Error

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

A motion to dismiss or affirm in this case was filed at the October Term, 1905. Consideration of this motion was postponed by the Court until the hearing upon the merits. As this motion was based in part upon the ground that the writ was manifestly taken for delay only, and that the question on which jurisdiction depends is so frivolous as not to need further argument, the questions arising upon the assignments of error have been to some extent discussed in the brief upon the motion. This brief must needs, therefore, to some extent consist of repetition.

The plaintiff in error is the owner of two shares of the capital stock of the New Haven and Derby Railroad Company, a Connecticut corporation. These are the only two outstanding shares of a total number of 4470; the remaining shares having been lawfully acquired by the defendant in error. The railroad is under lease to the defendant in error for the period of ninety-nine years from July 1st, 1892, at a rental to yield shareholders four per cent. per annum upon the capital stock during the remainder of the term (Record, folios 19 and 20, pages 10 and 11).

This proceeding was instituted under Sections 3694 and 3695 of the General Statutes of the State of Connecticut, 1902, (quoted in full in the record, folios 74 and 75, page 40 and on page 3 hereof), for the purpose of condemning the two shares of stock owned by the plaintiff in error. It was brought in the first instance before a Judge of the Superior Court, and reserved upon a demurrer to the substituted application for the advice of the Supreme Court of Errors. Advice was given that the demurrer be overruled (Record, folio 28, page 16). An answer was then filed to the substituted application (Record, folio 38, page 21). The demurrer to the second defense was sustained by the Judge of the Superior Court (Record, folio 44, page 24). A hearing was then had upon the merits of the substituted application, and a judgment rendered (Record, folio 45, page 25), finding all of the allegations of the substituted application to be true (folio 47) and that the purchase of the stock of the plaintiff in error would be for the public interest. Appraisers were appointed to estimate the damage that might arise to the plaintiff in error from the taking of his stock. Upon appeal to the Supreme Court of Errors of the State of Connecticut this judgment was affirmed; the opinion appearing on page 30 of the record.

Every question raised by the assignments of error was determined by the Supreme Court of Connecticut upon the first appeal. In so far as new questions were presented upon the second appeal, the decision of the state court is confessedly final. It is not and cannot be contended that the method provided by the statute in question for the assessment of damages denies due process of law to the plaintiff in error. There would appear to be but one real question involved in this case: whether this Court will review and reverse the decision of the highest State Court that the property of plaintiff in error is to be taken for a public use. It is claimed in behalf of the defendant in error that if the State Court has correctly determined the use to be a public one, all other questions fall to the ground, for in that event it of necessity follows that the plaintiff in error will not have been deprived of his property without due process of law, and that there has been no impairment of the obligation of contract.

These proceedings were taken under Sections 3694 and 3695 of the General Statutes of Connecticut, 1902, which are as follows:

"§ **3694. Condemnation of corporate stock.** In case any railroad company acting under the authority of the laws of this state shall have acquired more than three-fourths of the capital stock of any steamboat, ferry, bridge, wharf, or railroad corporation, and cannot agree with the holders of outstanding stock for the purchase of the same, such railroad company may, upon a finding by a judge of the superior court that such purchase will be for the public interest, cause such outstanding stock to be appraised in accordance with the provisions of § 3687. When the amount of such appraisal shall have been paid or deposited as provided in said section, the stockholder or stockholders whose stock shall have been so appraised shall cease to have any interest therein, and on demand shall surrender all certificates for such stock, with duly executed powers of attorney for transfer hereon, to the corporation applying for such appraisal.

§ 3695. Stockholders may begin proceedings. If any person holding a minority of the shares of stock of any corporation referred to in § 3694 cannot agree with the railroad company owning three-fourths of such stock for the purchase of his shares, he may cause the same to be appraised in accordance with the provisions of § 3687. When such appraisal shall have been made and recorded in the office of the clerk of the superior court of any county where such railroad company operates a railroad, and the certificates for such stock, with duly executed powers of attorney for transfer thereon, have been deposited with such clerk for such railroad company, such appraisal shall have the effect of a judgment against such company and in favor of the holder of such stock, and at the end of sixty days, unless such judgment is paid, execution may be issued."

Section 3687, referred to in each of the above sections, is as follows:

"**§ 3687. Land how taken; damages.** When any company shall have the right to take real estate for railroad purposes, and cannot obtain it by agreement with the parties interested therein, it may apply to any judge of the superior court for the appointment of appraisers to estimate all damages that may arise to any person from the taking and occupation of such real estate for railroad purposes, and after reasonable notice of said application shall have been given to all parties in interest, such judge shall appoint three appraisers, who shall be sworn, and give reasonable notice to said parties in regard to the time and place of making such estimate, and shall view the premises and estimate such damages, but shall not include in such estimate the expense of erecting and maintaining fences along the line of such railroad. Such appraisers shall return an appraisal of such damages in writing, under their hands, to the clerk of the superior court in the county where the estate lies, who shall record it; and when so returned and recorded, such appraisal shall have the effect of a judgment, and execution may issue at the end of sixty days from the time of such return, in favor of the persons respectively to whom damages may be appraised; and such appraisers shall be paid by such company for the time actually spent in making such appraisal and return. No railroad shall be worked upon, or opened across, any real estate, until the damages appraised to any person interested therein shall have been paid or secured to his satisfaction, or deposited for his use with the treasurer of the county."

ERRORS ASSIGNED.

The plaintiff in error challenges the validity of the judgment appointing appraisers to estimate the damage to become due to him by reason of the condemnation of his stock. The points contained in his six assignments of error may be re-arranged as follows:

1. The statutes of the State of Connecticut and the action taken thereunder deny to the plaintiff due process of law, because his property is to be taken for a private, not a public, use. (Record, pages 39–41; Assignments 1, 4 and 5.)

2. The statutes and the action taken thereunder constitute an impairment by the State of the obligation of contract. (Record, page 40; Assignment 2.)

3. The statute and the action taken thereunder are in violation of the Fifth Amendment of the Constitution of the United States.

ARGUMENT.

I.

The taking of the property of plaintiff in error will be for public use and therefore not without due process of law.

The Legislature of the State of Connecticut has in effect declared the use to be public provided a judge of the Superior Court shall find as a fact that the public interest is subserved by the taking in the particular instance. The privilege of condemnation of shares of stock is by statute limited to a class of corporations engaged in the public service. By the finding it is made clear how the public interest is to be promoted in this particular instance. It is plain that it is to be for legitimate railroad purposes. The highest court of the State has

construed the phrase "for the public interest" as equivalent to the phrase "for public use." The case then is this,—a railroad corporation, pursuant to the settled policy of the State, intends to take these two shares of stock for the purpose of greatly increasing the public usefulness of the railroad.

The argument of the State Court upon the first appeal (Record, page 16) is so clear and convincing, and the case presented is so far within the cases of Clark vs. Nash, 198 U. S., 361, and Strickley vs. Highland Boy Mining Co., 200 U. S., 527, that further argument is needless.

II.

The statutes in question and the action taken thereunder do not impair the obligation of any contract within the meaning of Article First, Section 10 of the Constitution of the United States.

It can scarcely be denied that property of any kind, tangible or intangible, including franchises, leasehold interests, shares of stock, etc., may be taken under the Eminent Domain and without infringement of any constitutional provisions. If the taking in this case be, as is contended, for public use, plaintiff in error is not deprived of his property without due process of law, nor is any contract obligation impaired.

III.

The statutes of the State of Connecticut and the action taken under them are not in violation of the Fifth Amendment of the Constitution of the United States.

This proposition needs no argument. The mistake of plaintiff in error is obvious.

Should there be no appearance, and no brief filed, in behalf of plaintiff in error, the defendant in error prays for an opening of the record and an affirmance of the judgment.

Respectfully submitted,

EDWARD G. BUCKLAND,
GEORGE D. WATROUS,
Counsel for Defendant in Error.